

HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HERBERT E. TOWNSEND, an individual,

Plaintiff,

v.

BROOKS SPORTS, INC., a Washington
corporation,

Defendant.

Case No. 2:17-cv-01322-RSM

**DECLARATION OF JONATHAN T.
McMICHAEL IN SUPPORT OF BROOKS
SPORTS, INC.'S OPPOSITION TO
TOWNSEND'S MOTION FOR AN ORDER
UNDER RULE 37(a)(3)(B)(iv)
COMPELLING THE PRODUCTION OF
DOCUMENTS**

**NOTE ON MOTION CALENDAR:
Friday, February 16, 2018**

**JURY TRIAL DEMANDED
ORAL ARGUMENT REQUESTED**

I, Jonathan T. McMichael, declare as follows:

1. I am an attorney with the law firm of Fenwick & West LLP, and counsel for Defendant Brooks Sports, Inc. ("Brooks") in this action. I submit this declaration in support of Brooks' Opposition to Townsend's Motion for an Order Under Rule 37(a)(3)(B)(iv) Compelling the Production of Documents. I have personal knowledge of the facts set forth in this declaration and, if called upon to do so, could and would testify competently as to those facts.

2. On January 17, 2018, counsel for Brooks met and conferred via telephone with counsel for Townsend regarding Brooks' responses to Townsend's requests for production. On this call, counsel for Brooks agreed to clarify Brooks' responses and objections to Townsend's requests

1 for production. We also clarified that Brooks was not withholding any documents based on their
2 confidentiality.

3 3. Attached as **Exhibit A** is a true and correct copy of Brooks' First Supplemental
4 Responses to Plaintiff's First Set of Requests for Production of Documents and Things (Nos. 1–42)
5 ("Supplemental Responses") served on Townsend on January 26, 2018. Highlighting has been added
6 to indicate portions of Exhibit A cited in Brooks' opposition brief.

7 4. Attached as **Exhibit B** is a true and correct copy of a letter sent by counsel for Brooks
8 to Steven J. Hampton, counsel for Townsend, on January 24, 2018. Highlighting has been added to
9 indicate portions of Exhibit B cited in Brooks' opposition brief.

10 5. Attached as **Exhibit C** is a true and correct copy of the Stipulated Interim Protective
11 Order, agreed to by both parties on August 22, 2017 while this case was pending in the United States
12 District Court for the Middle District of Florida.

13 6. On October 10, 2017, the parties met and conferred regarding a Joint Status Report
14 and Discovery Plan. The parties agreed to propose an ESI Order based on the Court's Model
15 Agreement Regarding Discovery of Electronically Stored Information, and subsequently indicated in
16 their Joint Status Report and Discovery Plan that the parties would "adopt an ESI Agreement based
17 on this District's ESI Model Agreement, as modified by the parties, and to preserve and produce ESI
18 pursuant to that Agreement." Dkt. No. 67 at 3.

19 7. On December 7, 2017, Brooks provided Townsend with a proposal for an ESI Order
20 based on this District's Model Agreement Regarding Discovery of Electronically Stored
21 Information.

22 8. On January 8, 2018, Townsend provided Brooks with its edits to Brooks' proposed
23 ESI Order.

24 9. The following table reflects the number of documents that Brooks has been able to
25 collect from the e-mail mailboxes of three Brooks custodians listed in Townsend's January 8, 2018
26 proposed ESI Order, as well as the size in gigabytes (GB) of these e-mail mailboxes. This table does
27

not include e-mail which may be inaccessible, or the volume of e-mail for the other custodians listed in Townsend's January 8, 2018 proposed ESI Order.

Custodian	Total Extracted Documents	Mailbox Size (GB)
Peter Humphrey	151,099	31
Heidi Chang	118,044	33
Nathan Vaikun	158,228	35

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed in Queen Creek, Arizona on February 12, 2018.

s/Jonathan T. McMichael

Jonathan T. McMichael

CERTIFICATE OF SERVICE

I, Elizabeth Mancera, hereby certify that on February 12, 2018, I caused the foregoing
DECLARATION OF JONATHAN T. MCMICHAEL IN SUPPORT OF BROOKS SPORTS, INC.’S OPPOSITION TO TOWNSEND’S MOTION FOR AN ORDER UNDER RULE 37(a)(3)(B)(iv) COMPELLING THE PRODUCTION OF DOCUMENTS to be served on the following parties as indicated below:

John D. Denkenberger (WSBA No. 25907) CHRISTENSEN O’CONNOR JOHNSON KINDNESS 1201 Third Avenue, Suite 3600 Seattle, WA 98101-3029 <i>Attorneys for Plaintiff Herbert E. Townsend</i>	<input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input checked="" type="checkbox"/> By Electronic CM/ECF <input type="checkbox"/> By Overnight Express Mail <input type="checkbox"/> By Facsimile <input type="checkbox"/> By Email john.denkenberger@cojk.com; litdoc@cojk.com
Steven J. Hampton (admitted pro hac vice) Gregory C. Schodde McANDREWS HELD & MALLOY, LTD. 500 West Madison, 34th Floor Chicago, IL 60611 <i>Attorneys for Plaintiff Herbert E. Townsend</i>	<input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input checked="" type="checkbox"/> By Electronic CM/ECF <input type="checkbox"/> By Overnight Express Mail <input type="checkbox"/> By Facsimile <input type="checkbox"/> By Email shampton@mcandrews-ip.com gschodde@mcandrews-ip.com

Dated: February 12, 2018

By: s/ Elizabeth Mancera

For Jonathan T. McMichael, WSBA No. 49895
FENWICK & WEST LLP